

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BENSLEY CONSTRUCTION, INC,
on its own behalf and on behalf
of all others similarly situated,

Plaintiff,

v.

Civil Action No. 05-11249-GAO

MARSH & MCLENNAN COMPANIES, INC.,
MARSH, INC., ACE USA, ACE INA, AMERICAN
INTERNATIONAL GROUP, AMERICAN RE-
INSURANCE COMPANY, ARTHUR J.
GALLAGHER & CO., HILB ROGAL & HOBBS,
COMPANY, WILLIS GROUP HOLDINGS, LTD.,
WILLIS NORTH AMERICA, INC., WILLIS
GROUP LTD., UNIVERSAL LIFE RESOURCES,
INC. (d/b/a ULR INSURANCE SERVICES, INC.),
THE CHUBB CORPORATION, USI HOLDINGS,
INC., METLIFE, INC. PRUDENTIAL
FINANCIAL, INC., UNUMPROVIDENT
CORPORATION, THE ST. PAUL TRAVELERS
COMPANIES, INC. ZURICH AMERICAN
INSURANCE COMPANY, LIBERTY MUTUAL
GROUP, INC., LIBERTY MUTUAL INSURANCE
COMPANY, LIBERTY MUTUAL FIRE
INSURANCE COMPANY, EMPLOYERS
INSURANCE COMPANY OF WAUSAU and ST.
JAMES INSURANCE COMPANY LTD.,

Defendants.

**MOTION TO DISMISS OF DEFENDANT
ST. JAMES INSURANCE COMPANY LTD.**

Pursuant to Federal Rule of Civil Procedure 12(b)(2), (5) and (6), defendant
St. James Insurance Company Ltd. ("St. James") hereby appears specially and
moves to dismiss the claims asserted by plaintiff Bensley Construction, Inc.

("Bensley") on its own behalf and on behalf of all others similarly situated, for failure to make sufficient service of process on St. James, lack of personal jurisdiction over St. James and failure to state a claim against St. James upon which relief can be granted. As its reasons therefor, and as explained in detail in the accompanying memorandum of law, St. James states:

The plaintiff filed the original complaint in this action in Essex Superior Court, that named St. James as a defendant, on or about February 18, 2005.

Massachusetts Rule of Civil Procedure 4(j) provides that a plaintiff must serve a summons and a copy of the complaint on each defendant within ninety (90) days of filing of the complaint.

As of July 6, 2005, St. James had not been served with a summons or a complaint in connection with the Massachusetts state court action.

St. James, appearing specially, served a motion to dismiss upon Bensley in connection with the then-pending state court action on or about June 14, 2005. Subsequently, other defendants removed this case to federal court.

St. James is a corporation established under the laws of Bermuda that does not conduct any business in the Commonwealth of Massachusetts.

There is no basis for Bensley's claims against St. James for recovery for breach of fiduciary duty and aiding and abetting a breach of fiduciary duty because St. James, as an insurer, owes no duty to Plaintiffs, as alleged insureds, as a matter of law.

There is no basis for Bensley's claim against St. James for unjust enrichment because that is a theory of recovery that exists only when a contract exists and is not performed fully.

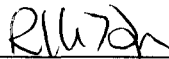
There is no basis for Bensley's claim against St. James for breach of contract and breach of the covenant of good faith and fair dealing because Bensley fails to allege that St. James and plaintiffs are parties to any contract, let alone one that was breached and caused damages to plaintiffs. In the absence of a contract, Bensley's claims for breach of contract and the covenant of good faith and fair dealing, which does not arise absent a contract, must fail.

WHEREFORE, St. James respectfully requests that the Court dismiss all claims asserted by plaintiff against St. James pursuant to Fed.R.Civ.P 12(b)(2), (5) and (6).

Respectfully submitted,

ST. JAMES INSURANCE COMPANY LTD.

By its attorneys,

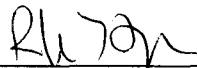


Ralph T. Lepore, III (BBO #294420)
James M. Tierney (BBO #644945)
HOLLAND & KNIGHT LLP
10 St. James Avenue
Boston, MA 02116
(617) 523-2700

Dated: July 8, 2005

LOCAL RULE 7.1 CERTIFICATION

I hereby certify that we have conferred with counsel for plaintiff by telephone on July 8, 2005, and the parties were unable to resolve the issues presented in this motion.



Ralph T. Lepore, III

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party on the attached service list by first class mail on July 8, 2005.



Ralph T. Lepore, III

SERVICE LIST FOR BENSLEY CONSTRUCTION, INC. V.
MARSH & MCLENNAN COMPANIES, INC., ET AL.

Kenneth G. Gilman, Esq.
Douglas J. Hoffman, Esq.
Gilman and Pastor, LLP
60 State Street, 37th Floor
Boston, MA 02109
(Attorneys for Bensley Construction, Inc.)

Daniel S. Savrin, Esq.
Bingham McCutchen LLP
150 Federal Street
Boston, MA 02110
(Attorneys for Marsh & McLennan Companies, Inc. and
Marsh, Inc.)

John AD Gilmore, Esq.
DLA Piper Rudnick Gray Cary
One International Place, 21st Floor
Boston, MA 02110-2600
(Attorneys for The Chubb Corporation)

Laura Besvinick, Esq.
Hogan & Hartson LLP
Mellon Financial Center
1111 Brickell Avenue, Suite 1900
Miami, FL 33131
(Attorneys for The Chubb Corporation)

Brien T. O'Connor, Esq.
Timothy J. Casey, Esq.
Ropes & Gray LLP
One International Place
Boston, MA 02110
(Attorneys for American Insurance Group, Inc.)

Roberta A. Kaplan, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(Attorneys for American Insurance Group, Inc.)

Paul C. Curnin, Esq.
Michael J. Garvey, Esq.
David H. LaRocca, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
(Attorneys for The St. Paul Travelers Companies, Inc.)

Joseph Hamilton, Esq.
Mirick, O'Connell, DeMallie & Lougee, LLP
100 Front Street
Worcester, MA 01608-1477
(Attorneys for Unum Provident Corporation)

Deborah E. Hryb, Esq.
Patrick W. Shea, Esq.
Paul, Hastings, Janofsky & Walker LLP
1055 Washington Boulevard, 9th Floor
Stamford, CT 06901
(Attorneys for Unum Provident Corporation)

John R. Middleton, Jr., Esq.
Lowenstein Sandler, PC
65 Livingston Avenue
Roseland, NJ 07068
(Attorneys for Prudential Financial, Inc.)

Daniel B. Winslow, Esq.
Patricia R. Rich, Esq.
Duane Morris LLP
470 Atlantic Avenue, Suite 500
Boston, MA 02210
(Attorneys for MetLife, Inc.)

Ian Crawford, Esq.
Todd & Weld LLP
28 State Street, 31st Floor
Boston, MA 02109
(Attorneys for USI Holdings Corp.)

Robert H. Pees, Esq.
Vadim Sarma, Esq.
Akin Gump Strauss Hauer & Feld, LLP
590 Madison Avenue
New York, NY 10022-2524
(Attorneys for USI Holdings Corp.)

David Gabianelli, Esq.
Ray L. Wong, Esq.
Ned M. Gelhaar, Esq.
Hancock Rothert and Bunshoft LLP
Four Embarcadero Center, Suite 300
San Francisco, CA 94111
(Attorneys for Universal Life Resources, Universal Life
Resources, Inc. (D/B/A ULR Insurance Services, Inc.))

James V. Masella III, Esq.
Richard C. Pepperman, II, Esq.
Anastasia A. Angelova, Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498
(Attorneys for Willis Group Holdings, Ltd., Willis North
America, Inc., and Willis Group Ltd.)

Juliane Balliro, Esq.
Perkins Smith & Cohen LLP
One Beacon Street, 30th Floor
Boston, MA 02108-3106
(Attorneys for Hilb Rogal & Hobbs Company)

Ingrid Hlawaty, Esq.
Edwin M. Larkin, Esq.
Lina M. Viviano, Esq.
200 Park Avenue
New York, NY 10166-4193
(Attorneys for Arthur J. Gallagher & Co.)

Terry M. Grimm, Esq.
Stephen C. Schulte, Esq.
Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601
(Attorneys for Arthur J. Gallagher & Co.)

Bruce W. Edmands, Esq.
Eckert Seamans Cherin & Mellott, LLC
One International Place
Boston, MA 02110
(Attorneys for Zurich American Insurance Company)

John F. Collins, Esq.
Molly Lehr, Esq.
Dewey Ballantine LLP
1301 Avenue of the Americas
New York, NY 10019
(Attorneys for American Re-Insurance Company)

Philip T. Newbury, Esq.
Mark J. Claflin, Esq.
Howd & Ludorf, LLC
65 Wethersfield Avenue
Hartford, CT 06114
(Attorneys for ACE USA, ACE INA)

H. Lee Godfrey, Esq.
Neal S. Manne, Esq.
Johnny W. Carter, Esq.
Jeffrey R. Seely, Esq.
Susman Godfrey LLP
1000 Louisiana Street, Suite 5100
Houston, TX 77002
(Attorneys for ACE USA, ACE INA)